IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1970.

No. 941.

CHARLES RIVEZZO,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

## REPLY.

The nature of the government's opposition to review in this case suggests that a short reply may be of assistance to the Court.

Only this Court should overrule its decisions in *Parr v. United States*, 363 U. S. 370, and *Kann v. United States*, 320 U. S. 88, and not the courts below or the Solicitor General.

*In Kann v. United States, supra*, this Court stated (page 94):

> "The scheme in each case had reached fruition. The persons intended to receive the money had received it irrevocably. It was immaterial to them, or to any consummation of the scheme, how the bank which paid or credited the check would collect from the drawee bank. It cannot be said that the mailings in question

were for the purpose of executing the scheme, as the statute requires." (Footnote omitted.)

And both the majority and minority opinions in *Parr* cited *Kann* as follows:

> "If the use of the mails occurred not as a step in but only after the consummation of the scheme, the fraud is the exclusive concern of the States." (Pages 389-390, 397.)

In this case, Pucci, when he used the credit card on eleven different occasions to obtain food, lodging and airplane tickets from the various suppliers in amounts ranging from $12.00 to $330.00, for a total amount of slightly over $1,000.00, received the items "irrevocably". It was just as immaterial to Pucci as it was to Kann how the suppliers would be paid or to any consummation of the scheme. There was no dependence by anyone, suggested *for the first time* by the government on any "time lag" because of the use of the mails. Obviously, there is a time lag in all cases of fraud between execution and discovery but all that Pucci was concerned with was using the items that he irrevocably received by means of a stolen credit card. The mailings occurred not as a step in but only *after* the consummation of the scheme. Since not even a theory of "time lag" was dreamed of by the prosecutor, no evidence was produced in the trial court to show that the use of the mails here involved a "time lag" different than if the mails were not used. Indeed, since the suppliers and the office of the Diners Club were located in New York City, this would have been impossible.

The case was tried on the theory that the misuse of credit cards meant the misuse of the mails. But Congress was not of that belief; otherwise a Credit Card Act providing criminal penalties for the unauthorized use of

credit cards would not have been enacted. A supplemental brief was filed in this Court calling attention to the Credit Card Act, but the Solicitor General ignored it just as this Court's decisions in *Parr* and *Kann* were ignored.

Since the government now defends this prosecution under the Mail Fraud Act on the merits, additional recurring problems in the various federal courts will continue to exist until this Court again decides whether a wrongful scheme for use of a credit card constitutes a violation of the federal mail fraud statute. In our Petition is data from 1967 on the number of credit cards outstanding and the number of lost and stolen cards. Since then, according to an Associated Press dispatch of December 21, 1970, the District Attorney of the Borough of Brooklyn, New York, has stated that 1.5 million credit cards are lost or stolen each year. Within the past weeks, Congress moved to limit federal criminal jurisdiction to fraudulent schemes aggregating $5,000.00 or more. The decision of the court below, if allowed to stand, negates that limitation and creates a major extension of the workload of the federal judicial system.

It is respectfully submitted that the petition for a writ of certiorari should therefore be granted.

JACOB KOSSMAN,
*Attorney for Petitioner.*

December 1970